

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD<sup>1</sup>  
REGION 32

IMPERIAL GLASS COMPANY, INC.

Employer

and

Case 32-RC-5714

DISTRICT COUNCIL 16, PAINTERS  
LOCAL UNION 294, INTERNATIONAL  
UNION OF PAINTERS AND ALLIED TRADES

Petitioner

**REPORT AND RECOMMENDATION ON CHALLENGED BALLOTS,  
ORDER CONSOLIDATING CASES, AND NOTICE OF HEARING**

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned has caused an investigation of the challenged ballots to be conducted and hereby recommends that the challenge to the ballot of Alfredo Estrada be sustained. The remaining challenged ballots are set for hearing.

**The Election**

The Petition in this matter was filed on February 8, 2010.<sup>2</sup> Pursuant to a Stipulated Election Agreement approved on February 12, an election by secret ballot was conducted on March 5, in the following unit:

All full-time and regular part-time Glaziers employed by the Employer at its Fresno, California facility; excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

During the election only one voter cast an unchallenged ballot; the ballots of three other voters were challenged. Accordingly, at the conclusion of the polling period, because it

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<sup>1</sup> Hereinafter referred to as the Board.

<sup>2</sup> All dates hereinafter refer to calendar year 2010 unless otherwise noted.

was apparent that a determinative result of the election was not possible, and because the secrecy of the one non-challenged voter would be compromised, all the ballots were impounded, pending an investigation of the challenged ballots. *United Furniture Workers of America, AFL-CIO*, 146 NLRB 474 (1964).

### **The Challenged Ballots**

The Board agent conducting the election challenged the ballots of Alfredo Estrada and Ernie Caballero on the ground that their names were not on the eligibility list supplied by the Employer. The Petitioner challenged the ballot of A.J. Lystad on the ground that he is the son of one of the Employer's owners.

In related Case 32-CA-24968, the Petitioner alleged that the Employer discriminated against Alfredo Estrada and Ernie Caballero in violation of Section 8(a)(1) and (3) of the Act. On April 30, the undersigned dismissed the allegation that Estrada was unlawfully discharged.<sup>3</sup> Accordingly, because Estrada was discharged on February 4, and thus was no longer employed on March 5, the date of the election, he was ineligible to vote.<sup>4</sup> Accordingly, I recommend that the challenge to the ballot of Alfredo Estrada be sustained.

On April 30, a Complaint and Notice of Hearing issued in Case 32-CA-24968, alleging, inter alia, that on or about February 5, the Employer laid off Ernie Caballero and since that date has failed and refused, and continues to fail and refuse, to reinstate him to his former position of employment in violation of Section 8(a)(1) and (3) of the Act. Accordingly, the eligibility of Ernie Caballero raises material issues of fact and/or law that can best be resolved by a hearing.

The investigation revealed that A.J. Lystad is the grandson of Tom Valient, the Employer's principal owner and the son of Karen Lystad, who has an ownership interest in the Employer. The eligibility of A.J. Lystad raises material issues of fact and/or law that can best be resolved by a hearing.

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<sup>3</sup> The dismissal of that allegation was not appealed.

<sup>4</sup> *Texas Meat Packers*, 130 NLRB 29 (1961).

### **ORDER CONSOLIDATING CASES AND NOTICE OF HEARING**

As it appears that the challenged ballot of Ernie Caballero and the matters involved in the aforementioned Complaint in Case 32-CA-24968 constitute a single, overall controversy, the purposes of the Act will be effectuated and unnecessary cost or delay will be avoided by considering jointly the unfair labor practices alleged in Case 32-CA-24968 and the challenged ballot of Ernie Caballero in Case 32-RC-5714.

Accordingly, pursuant to Section 102.33 and 102.72 of the Board's Rules,

**IT IS HEREBY ORDERED** that Case 32-CA-24968 and Case 32-RC-5714 be, and they hereby are, consolidated for purposes of a hearing before an Administrative Law Judge.

**IT IS FURTHER ORDERED** that on the 14th day of July, 2010, at 9:00 a.m., at a location to be designated in Fresno, California, and continuing on consecutive days thereafter until completed, a hearing on the challenged ballots in Case 32-RC-5714 as well as on the unfair labor practices alleged in the Complaint in Case 32-CA-24968 will be conducted before a duly designated Administrative Law Judge of the Board, at which time and place the parties will have the right to appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement of Standard Procedures in Formal Hearings Held before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

**IT IS HEREBY REQUESTED** that the Administrative Law Judge designated for the purpose of conducting the hearing prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact and recommendations to the Board as to the disposition of said challenged ballots and objections. Within the times prescribed by the Board's Rules, any party may file with the National Labor Relations Board, 1099 14th Street, N.W., Washington, DC, 20570-0001, an original and seven copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof upon each of the other parties, and shall file a copy with the Regional Director. If no exceptions are filed

thereto, the Board may decide the matter forthwith upon the record or may make other disposition of the case.

DATED AT Oakland, California, June 30, 2010.<sup>5</sup>

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/s/

Alan B. Reichard, Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, California 94612-5211

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<sup>5</sup> Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Report may be filed with the National Labor Relations Board, 1099 14th Street, N.W., Washington, DC, 20570-0001. Pursuant to Section 102.69(g), affidavits and other documents which a party has submitted timely to the Regional Director in support of objections are not part of the record unless included in the Report or appended to the exceptions or opposition thereto which a party submits to the Board. Exceptions must be received by the Board in Washington, DC by July 14, 2010. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the [www.nlr.gov](http://www.nlr.gov). On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.